

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DOMINIQUE STINSON and OCTAVIA)
WILLIAMS, individually and on behalf of all)
others similarly situated,)
)
Plaintiffs,) Case No. 1:20-cv-04603
)
v.) Honorable Judge John J. Tharp, Jr.
)
LCS COMMUNITY EMPLOYMENT LLC,) Magistrate Judge M. David Weisman
LCS MOKENA LLC d/b/a CLARENDALE OF)
MOKENA, and ALGONQUIN)
OPERATIONS, LLC d/b/a CLARENDALE)
OF ALGONQUIN,)
)
Defendants.

**DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' COMPLAINT
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6) AND 12(b)(1)**

Defendants LCS Community Employment LLC (“LCE”), LCS Mokena LLC d/b/a Clarendale of Mokena (“LCS Mokena”), and Algonquin Operations, LLC d/b/a Clarendale of Algonquin (“Algonquin Operations”) (collectively, “Defendants”), by their undersigned counsel, respectfully move this Court to dismiss Plaintiffs’ Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). Concurrently with the filing of this Motion, Defendants have submitted a Joint Memorandum in Support of the same (“Memorandum”), and in further support, Defendants state as follows:

1. This is a putative class action under the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.* Plaintiffs allege that during the periods they were employed by LCE and working at facilities allegedly operated by LCS Mokena and Algonquin Operations, respectively, “Defendants” required them to “use a biometric time clock system to record their time worked,” and violated the requirements of the BIPA in doing so. (Compl. ¶¶ 6, 14-15.) For

the following reasons, Defendants respectfully request that the Court dismiss all of Plaintiffs' claims.

2. *First*, Plaintiffs' claims are untimely under 735 ILCS 5/13-201, which provides that claims involving "publication of matter violating the right of privacy shall be commenced within one year next after the cause of action accrued." Alternatively, Plaintiffs' claims are untimely under Illinois' two-year statute of limitations for personal injury claims under 735 ILCS 5/13-202.

3. *Second*, because Plaintiffs allege a statutory right to recover for an alleged workplace injury, their exclusive remedy is through the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* Their BIPA claims are therefore preempted.

4. *Third*, Plaintiffs' BIPA claims must be dismissed because Plaintiffs have not pled sufficient facts to support plausible violations of any BIPA requirement and a recovery of liquidated damages. Specifically, Plaintiffs have failed to allege that Defendants acted negligently or recklessly; failed to allege that Defendants possess their biometric information; and failed to allege that Defendants disclosed their biometric information.

5. *Fourth*, the Complaint contains no allegations as to what LCS Mokena or Algonquin Operations actually did to violate the BIPA. Plaintiffs offer only a formulaic recitation that "Defendants" violated that statute, and allege no specific involvement by those entities.

6. *Fifth*, because their BIPA claims "complete[d] a financial transaction requested or authorized" by Plaintiffs, their Section 15(d) claim is excluded under Section 15(b)(2) of the BIPA.

7. *Sixth*, Plaintiffs have failed to plead facts showing that they are entitled to injunctive relief under Sections 15(b) or 15(d).

WHEREFORE, for all of the reasons stated above and in Defendants' supporting Memorandum, Defendants respectfully request that the Court dismiss this action with prejudice and grant any additional relief it deems just and appropriate.

Dated: December 11, 2020

Respectfully submitted,

**DEFENDANTS LCS COMMUNITY
EMPLOYMENT LLC; LCS MOKENA LLC
D/B/A CLARENDALE OF MOKENA; AND
ALGONQUIN OPERATIONS, LLC D/B/A
CLARENDALE OF ALGONQUIN**

By: /s/ Jason A. Selvey
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, Jason A. Selvey, an attorney, certify that on December 11, 2020, I caused a true and correct copy of the attached ***Defendants' Joint Motion to Dismiss Plaintiffs' Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1)***, to be filed with the Court by electronic filing protocols, and that same will therefore be electronically served upon all attorneys of record registered with the Court's ECF/CM system.

/s/ Jason A. Selvey _____